



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,065	09/09/2003	Nancy Lucas	33449.8047.US00	9198
53175 7590 06/30/2008 PERKINS COIE LLP/CARGILL, INC. P.O. BOX 1247 SEATTLE, WA 98111-1247				
EXAMINER				
PASCUA, JES F				
ART UNIT		PAPER NUMBER		
3782				
MAIL DATE		DELIVERY MODE		
06/30/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/657,065

**Applicant(s)**

LUCAS ET AL.

**Examiner**

Jes F. Pascua

**Art Unit**

3782

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2,4-17, 19-32, 42, 44, 46-54 and 56-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,4-17, 19-32, 42, 44, 46-54 and 56-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first handle formed by one of a cut and a series of perforations wherein the first handle includes a rigid handle (claim 22) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. Claim 31 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Dependent claim 31 recites "a tube having closed ends", which is already recited in independent claim 29 as "a sealed substantially tubular shaped body...seals at the first and second ends".

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 22 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to provide an adequate written description of the first handle being formed by one of a cut and a series of perforations wherein the first handle includes a rigid handle.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 19-23 and 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 19, it is unclear if "a sheet having one or more layers" refers to one of the "first and second plastic sheets" of claim 29 or a sheet in addition to the "first and second plastic sheets".

In claim 20, it is unclear which of the first and second plastic sheets the patch is attached to.

In claim 21, it is unclear which of the first and second plastic sheets is "folded over and attached to itself".

In claim 22, the relationship and association between the cut or series of perforations forming the first handle and the included rigid handle has not been defined.

Claim 56 is indefinite because it depends from cancelled claim 55.

Claim 23 is rejected since it depends from a claim rejected under 35 U.S.C. § 112, second paragraph.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2, 5, 8-15, 19, 21, 24-29, 31, 32, 42, 48-54, 59, 61, 63 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,338,117 to Kucksdorf et al. and U.S. Patent No. 3,249,285 to Dollheimer et al.

Kucksdorf et al. discloses the claimed device except for the first handle formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the first portions of the opposing panels folded over along a fold line transverse to the longitudinal direction and attached to themselves. Dollheimer et al. discloses that it is known in the art to provide a handle formed from a flap including a stack of panels formed from first portions of opposing panels, the handle being formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the first portions of the opposing panels folded over along a fold line transverse to the longitudinal direction and attached to themselves. See Fig. 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the first handle of Kucksdorf et al. by including a stack of panels formed from the first portions of the opposing panels, the first handle is formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the first portions of the opposing panels folded over along a fold line transverse to the longitudinal direction and attached to themselves, as taught by Dollheimer et al., in order to increase the carrying strength of the first handle.

Regarding claims 8, 10, 25, 29, 48 and 50, Kucksdorf et al. and Dollheimer et al. disclose the claimed device, as discussed above, except it is unclear if the Kucksdorf et

al. bag contains loose material. In the description of the prior art, Kucksdorf et al. discloses that it is known in the art to provide loose materials "such as pet food, coffee, or similar granular products" within square-bottom bags. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bag of Kucksdorf et al. with the loose materials of the prior art bags, since one of the objects of the Kucksdorf et al. invention is to provide a bag having handle means usable for carrying and/or dispensing contents. Applicant's remarks, filed 04/15/2008, inadequately traverse the Examiner's statement of obviousness. Therefore, the statement is taken to be admitted prior art.

Regarding claims 9, 24, 32 and 49, Kucksdorf et al. and Dollheimer et al. discloses the claimed invention, as discussed above, except for the contents of the bag being salt. It would have been an obvious matter of design choice to contain salt within the Kucksdorf et al. bag, since applicant has not disclosed that salt within a bag solves any stated problem or is for any particular purpose and it appears that the Kucksdorf et al. invention would perform equally well with salt contained therein. Applicant's remarks, filed 04/15/2008, inadequately traverse the Examiner's statement of obvious design choice. Therefore, the statement is taken to be admitted prior art.

9. Claims 4, 16, 17, 20, 30, 44, 56-58, 60, 62 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kucksdorf et al. and Dollheimer et al. as applied to claim 5 above, and further in view of U.S. Patent No. 5,593,229 to Warr.

Kucksdorf et al. and Dollheimer et al. disclose the claimed device, as discussed above, except for the first end having a tear seam. Warr discloses that it is known in the art to provide a tear seam at a first end of an analogous bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first end of the Kucksdorf et al. bag with the tear seam of Warr, in order to facilitate opening the bag and to form a pour spout for dispensing contents.

Regarding claims 16, 17, 30, 56 and 57, Kucksdorf et al., Dollheimer et al. and Warr disclose the claimed invention, as discussed above, except for a second tear seam at the second end of the bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second tear seam at the second end of Kucksdorf et al., since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Applicant's remarks, filed 04/15/2008, inadequately traverse the Examiner's statement of obvious duplication of essential working parts. Therefore, the statement is taken to be admitted prior art.

Regarding claims 4, 20 and 44, Kucksdorf et al., Dollheimer et al. and Warr, disclose the claimed device, as discussed above, except for the first handle having a patch and a cut extending through the patch. Warr further discloses that it is known in the art to provide a patch with a cut on the handle of an analogous bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first handle of Kucksdorf et al. with the patch having a cut of Warr, in order to reinforce the handle.



10. Claims 2, 5-8, 10, 13-15, 19, 21-23, 25, 27-29, 31, 42, 46-48, 50, 53, 54, 59, 61 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,782,562 to Anspacher and U.S. Patent No. 3,249,285 to Dollheimer et al.

Anspacher discloses the claimed device except for the first handle formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the first portions of the opposing panels folded over along a fold line transverse to the longitudinal direction and attached to themselves. Dollheimer et al. discloses that it is known in the art to provide a handle formed from a flap including a stack of panels formed from first portions of opposing panels, the handle being formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the first portions of the opposing panels folded over along a fold line transverse to the longitudinal direction and attached to themselves. See Fig. 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the first handle of Anspacher by including a stack of panels formed from the first portions of the opposing panels, the first handle is formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the first portions of the opposing panels folded over along a fold line transverse to the longitudinal direction and attached to themselves, as taught by Dollheimer et al., in order to increase the carrying strength of the first handle.

Regarding claims 7, 23 and 47, the recitation "injection-molded plastic handle" does not define over the rigid plastic handle of Anspacher. The method of forming the

handle is not germane to the issue of patentability of the handle itself. Therefore, this limitation has not been given patentable weight.

As a note, Anspacher discloses the body being sealed at seam 82 by heat sealing (column 6, lines 12-16), which meets the recitation "non-resealable sealed body".

11. Claims 2, 4-15, 19-29, 31, 42, 44, 46-54, 59, 61, 63 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,383,017 to Krings and Dollheimer et al..

Krings discloses the claimed invention, especially the handles including a patch of rigid plastic material (column 2, lines 34-45). However, Krings shows the handles formed through a single stack of panels instead of a double stack of panels. Dollheimer et al. shows that a handle formed through a double stack of panels is an equivalent structure known in the art. Therefore, because these two handle means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the Krings handles formed through a single stack of panels for handles formed through a double stack of panels.

Regarding claims 8-10, 24, 25, 29, 32 and 48-50, Krings. and Dollheimer et al. discloses the claimed invention, as discussed above, except for the contents of the bag being salt, fertilizer, cement, granular chemicals, pet food or landscaping materials. It would have been an obvious matter of design choice to contain salt, fertilizer, cement, granular chemicals, pet food or landscaping materials within the Krings bag, since

applicant has not disclosed that salt, fertilizer, cement, granular chemicals, pet food or landscaping materials within a bag solves any stated problem or is for any particular purpose and it appears that the Krings invention would perform equally well with salt, fertilizer, cement, granular chemicals, pet food or landscaping materials contained therein.

Regarding claims 7, 23 and 47, the recitation "injection-molded plastic handle" does not define over the rigid plastic handle of Anspacher. The method of forming the handle is not germane to the issue of patentability of the handle itself. Therefore, this limitation has not been given patentable weight.

### ***Response to Arguments***

12. Applicant's arguments regarding the rejection of the claims as being unpatentable over Kucksdorf et al. and Dollheimer et al., filed 04/15/2008, have been fully considered but they are not persuasive. Applicant remarks that Kucksdorf does not disclose a multi-handled bag comprising a "substantially tubular shaped body without intucked sides" or a "substantially tubular shaped body having outwardly protruding sides". However, Figs. 22 and 23 of Kucksdorf et al. clearly show a multi-handled bag comprising a body without intucked sides (12', 14') that protrude outwardly (i.e., out of plane with the first and second handles). Moreover, the rectangular shape of Kucksdorf et al. meets the recitation of a "substantially tubular shaped body" to the same degree applicant sets for the metes and bounds of the term "tubular".

Applicant's remarks regarding the rejection of the claims as being unpatentable over Kucksdorf et al., Dollheimer et al. and in further view of Warr have been considered and deemed unpersuasive for the reasons discussed above.

Applicant's arguments regarding the rejection of the claims as being unpatentable over Anspacher and Dollheimer et al., filed 04/15/2008, have been fully considered but they are not persuasive. Applicant remarks that Anspacher does not disclose "the opposing panels being directly attached to each other at the first end to form a non-resealable seam and at the second end to form a non-resealable second seam". However, Anspacher discloses the container being "heat sealed on all four sides" (column 7, line 10), which heat seals are considered to be non-resealable.

13. Applicant's arguments with respect to claims 2, 4-17, 19-32, 42, 44, 46-54 and 56-65, have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/  
Primary Examiner, Art Unit 3782